IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.08.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. MANIKUMAR
..
WRIT APPEAL No.1069 of 2006
and M.P.No.1 of 2006

S. Abdul Majid .. Appellant

vs.

1. Tamizhaga Aaramba Palli
   Asiriyar Kootani
   (Reg.No.194/05)
   rep. by its General Secretary
   KTR Nagar, Beach Road
   Cuddalore.

2. State of Tamil Nadu
   rep. by Secretary to Government
   Dept. Of Commercial Taxes
   and Registration,
   Fort St. George
   Chennai 600 009.

3. Inspector General of Registration
   100 Santhome High Road
   Chennai 600 004.

4. The District Registrar (Registration)
   Cuddalore.

5. D. Dayalan

6. S. Kasi .. Respondents

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Writ Appeal filed under Clause 15 of the Letters of Patent against the order of the learned Judge Mr. Justice C. Nagappan dated 10.08.2006 made in M.P.No.2 of 2006 in M.P.No.1 of 2006 in WP.No.22399 of 2006 presented to this Court under Article 226 of the Constitution of India. Writ of Certiorari calling for the records of the 2nd respondent made in Reg.No. 14068/1, 1/06-2 dt. 28.6.2006 and the consequential order of the 3rd respondent dt. 30.6.2006 bearing

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No.4104/A.2/2006 dt. 30.6.2006 and quash the said proceedings dt. 28/6/2006 and 30.6.2006 of the 2nd & 3rd respondents respectively.

For appellant : Mr. K.M. Vijayan, Sr. Counsel
for Mr. R. Saravanakumar

For respondents: Mr. R. Muthukumarasamy, Sr. Counsel
for Mr. A. Jenasenan for R.1

Mr. R. Krishnan for R.5

..

JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

Aggrieved by the order of the learned single Judge dated 10.08.2006, 5th respondent in W.P.No.22399 of 2006 has filed the present appeal.

2. First respondent herein, viz., Tamizhaga Aaramba Palli Asiriyar Kootani through its General Secretary has filed W.P.No.22399 of 2006, praying to issue a writ of Certiorari, calling for the records of the second respondent therein, viz., Inspector General of Registration, Chennai 600 004, made in Ref.No.14068/1,1/06-2 dated 28.06.2006 and the consequential order of the third respondent - District Registrar, Cuddalore, dated 30.06.2006 and to quash the same. Along with the said writ petition, the writ petitioner has also filed an application praying for stay of both the impugned orders. The learned single Judge of this Court, while admitting the writ petition on 14.07.2006, granted interim stay in M.P.No.1 of 2006. Aggrieved by the same, 5th respondent in the writ petition filed M.P.No.2 of 2006, praying to vacate the interim order granted in M.P.No.1 of 2006 on 14.07.2006.

3. The learned single Judge, after considering the rival contentions and all other circumstances of the case and after taking note of the issue raised, concluded that it is desirable to dispose of the main writ petition itself at an early date, made the interim stay absolute and dismissed the vacate stay petition (M.P.No.2 of 2006). In the same order, the learned judge directed the Registry to post the writ petition for final disposal in the first week of November, 2006. Questioning the said order, the present appeal is filed at the instance of the 5th respondent in the writ petition.

4. Heard Mr. K.M. Vijayan, learned senior counsel for the appellant, Mr. R. Muthukumarasamy, learned senior counsel for the contesting first respondent and Mr. R.Krishnan, learned counsel for the 5th respondent.

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5. At the foremost, Mr. K.M. Vijayan, learned senior counsel for the appellant after taking us through the earlier proceedings, including the gazette notification dated 02.09.1998 as well as the relevant provisions, viz., Section 44(1) to 44(4) of the Tamil Nadu Societies Registration Act, 1975 (in short "the Act"), contended that the learned Judge is not justified in making the stay absolute and the learned Judge ought to have vacated the same. He has no grievance regarding the direction for posting the writ petition for final disposal at an early date.

6. On the other hand, Mr. R. Muthukumarasamy, learned senior counsel for the contesting first respondent after taking us through the pleadings of both parties, relevant provisions, show cause notice issued under Section 44 (1), another notice under Section 44 (2) of the Act and the notification dated 02.09.1998, contended that the learned Judge is fully justified in making the stay absolute, since the issue has to be considered in the writ petition itself in one way or the other. He also contended that in view of the earlier notices issued under Section 44 (1) and (2) of the Act, the notification, which is gazetted on 02.09.1998, came to be issued under Section 44(4) and not under 44(3) of the Act as stated therein.

7. Learned counsel appearing for the 5th respondent also put forth his contention.

8. We have considered the rival contentions. It is true that the learned Judge while making the stay absolute and dismissing the vacate stay petition, has not assigned specific reasons, however, it cannot be claimed that the learned Judge has not applied his mind with reference to the points raised. It is clear that the learned Judge, after hearing the rival contentions and taking note of all other circumstances, concluded that the issue has to be decided in one way or the other in the main writ petition itself and in this view of the matter, made the stay absolute and fixed an early date (First week of November,2006) for the disposal of the main writ petition.

9. In the light of the contentions raised by the learned senior counsel for the appellant as well as the contesting first respondent, we verified the relevant provisions, viz., Sub-sections (1) to (4) of Section 44 of the Act as well as the show cause notice issued under Section 44(1), another notice issued under Section 44(2), which is dated 25.02.1998 and the notification dated 02.09.1998. By placing reliance on these provisions as well as the notifications, it is the claim of the learned senior counsel for the appellant that respondents 3 and 4 are fully justified in passing the impugned orders, which are under challenge before the learned single Judge. On the other hand, it is the specific stand of the learned senior counsel for the contesting first respondent that the show cause notice was issued under Section 44 (1) and another notice dated 25.02.1998 was issued

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under Section 44 (2) of the Act, but the notification published in the gazette dated 02.09.1998 is under Sub-section (4) of Section 44 of the Act. In the light of the rival contentions, as rightly observed by the learned single Judge, these issues have to be considered in the main writ petition itself and it is not desirable to give our finding at this stage. Inasmuch as the learned Judge himself has fixed an early date, viz., First week of November, 2006, for the disposal of the writ petition, we are of the view that all the contentions raised by both sides have to be considered only in the main writ petition. In this view of the matter, we agree with the conclusion arrived at by the learned single Judge. Accordingly, the writ appeal fails and the same is dismissed. No costs. Consequently, connected MP., is also dismissed.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Dept. Of Commercial Taxes
   and Registration,
   Fort St. George,Chennai 600 009.

2. Inspector General of Registration
   100 Santhome High Road
   Chennai 600 004.

3. The District Registrar (Registration)
   Cuddalore.

COPY TO:

The Section Officer, Writ Section,
High Court, Madras.

1 CC TO MR.R. SARAVANAKUMAR, ADVOCATE SR 38168

1 CC TO GOVT. PLEADER, SR 37866

1 CC TO MR.A. JENASENAN, ADVOCATE SR 37789

Judgement in
Writ Appeal No.1069 of 2006

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bp/31.8.06

23.08.2006

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